

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

ORIGINAL
WITH PROOF
OF SERVICE

75-1133

To be argued by
ARTHUR M. GURFEIN

B
P/S

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs

JAMES ERNEST MANNING,

Defendant,

STUYVESANT INSURANCE CO.,

Surety-Appellant.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR APPELLANT,
STUYVESANT INSURANCE COMPANY

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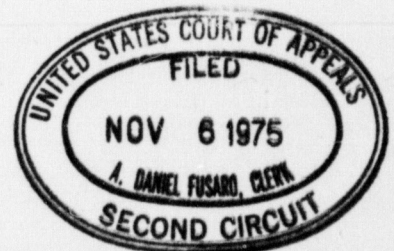


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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs

JAMES ERNEST MANNING,

Defendant,

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ON APPEAL FROM A JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR APPELLANT,
STUYVESANT INSURANCE COMPANY

A R G U M E N T

The plaintiff-appellee in its Brief relies essentially on two points to justify its contention that the \$20,000 bail forfeiture should not be remitted wholly or in substantial part.

Namely, these are that (1) the Government expended a great deal of time, money and effort in trying to locate the defendant after he failed to appear on May 13, 1969, and (2) that the Government was prejudiced by the defendant's flight.

Nowhere in the plaintiff-appellee's brief does the Government direct itself to the critical issue as to whether it is better, in the interests of justice, to reward the surety for the efforts and results of its search that led to defendant's apprehension than to punish the surety because the defendant failed to appear (a matter which the surety had no reason to suspect in light of five previous appearances in court by the defendant).

In paragraph 3 of said Brief, the plaintiff admits that the purpose of staying execution of the Order of Forfeiture was to give the surety an opportunity to find and surrender the defendant. The surety directed itself to this task and did supply the information that produced the defendant.

In contrast, all that the Government has introduced to show what efforts it expended is a single, unsupported conclusory statement in an affidavit by an Assistant U.S. Attorney that:

"3. After a long and extensive search, on Sept. 16, 1969, the defendant was arrested." (A-47)

The inference is that the long and extensive search was

made by the Government, but the fact is that it was the surety's efforts that produced the results.

As to the plaintiff-appellee's contention that the Government was prejudiced by the delay of the trial, there is no such evidence in the record, and in fact the defendant was convicted after trial and is serving his sentence.

It is axiomatic that the purpose of bail is to assure the presence of a defendant at trial. It was primarily because the surety's bail was at risk that it expended its efforts herein that produced the defendant for trial. The quid pro quo for the efforts is that the bail shall not be forfeited wholly or in substantial part.

As Judge Cannella stated in his opinion dated November 20, 1969, it was the information which the surety supplied to the federal agents on September 16, 1969 that led directly to the defendant's arrest on that day (A-51).

CONCLUSION

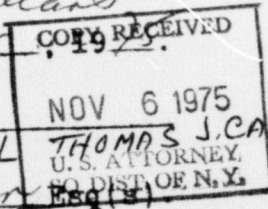
The \$20,000 bail forfeiture should be remitted in whole or in substantial part.

Respectfully submitted,

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of Counsel

received ² copies of the within
Reply Brief for Appellant
this 6 day of Nov



Sign

For:

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Plaintiff Appellee

